

MONTANA
STATE
LIBRARY

This “cover” page added by the Internet Archive for formatting purposes

STATE DOCUMENTS COLLECTION

DEC 2 1992

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA, MONTANA 59620

**IMPROVING STATE-TRIBAL RELATIONS:
1991-92 ACTIVITIES OF THE
COMMITTEE ON INDIAN AFFAIRS**

A Report to the 53rd Legislature
from the
Committee on Indian Affairs

Prepared by Connie F. Erickson, Staff Researcher

November 1992

Montana Legislative Council
Room 138, State Capitol
Helena, MT 59620

PLEASE RETURN

MONTANA STATE LIBRARY
S 328.3 L13ria 1992 c. 1 Erickson
Improving state-tribal relations : 1991-9



3 0864 00081648 1

MEMBERSHIP:
COMMITTEE ON INDIAN AFFAIRS

Sen. Delwyn Gage
Presiding Officer

Sen. Mignon Waterman

Rep. Angela Russell
Vice Presiding Officer

Rep. Rolph Tunby

Committee Staff:
Connie F. Erickson, Staff Researcher
Eddy McClure, Staff Attorney

Published by:
Montana Legislative Council

Robert B. Person, Executive Director
Gregory J. Petesch, Director, Legal Services
David D. Bohyer, Director, Research and Reference Services

TABLE OF CONTENTS

RESPONSIBILITIES OF THE COMMITTEE ON INDIAN AFFAIRS	1
HOUSE BILL NO. 1012	3
HOUSE JOINT RESOLUTION NO. 56	5
RECOMMENDATION	7
CIGARETTE TAXATION	9
DISPARITIES IN THE CRIMINAL SENTENCING OF NATIVE AMERICANS	17
OTHER ISSUES	23
SUMMARY	29
APPENDICES	31

**RESPONSIBILITIES OF THE
COMMITTEE ON INDIAN AFFAIRS**

Montana Code Annotated

5-19-108. Duties of the committee. The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies in order to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as a liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations;

(6) cooperate with the commissioner of higher education in a study of Indian students in Montana schools; and

(7) as provided in 5-11-210, report its activities, findings, recommendations, and any proposed legislation to the legislature.

HOUSE BILL NO. 1012

AN ACT REQUIRING NEGOTIATIONS BETWEEN THE STATE AND TRIBAL GOVERNMENTS FOR COLLECTION OF A CIGARETTE SALES TAX FROM NON-INDIAN PURCHASERS FOR CIGARETTES SOLD ON INDIAN RESERVATIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT FINDINGS CONCERNING NEGOTIATIONS TO THE INTERIM COMMITTEE ON INDIAN AFFAIRS; REQUIRING THE INTERIM COMMITTEE ON INDIAN AFFAIRS TO PROPOSE LEGISLATION TO THE 53RD LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Revenue oversight -- state and tribal negotiations -- report to legislature. (1) The legislature directs the department of revenue to:

(a) discuss and negotiate alternative methods for the collection of cigarette taxes, including the possibility of future tribal taxation, with the tribal governments of each Montana reservation or their designated representatives, the Montana tribal chairman's association, and the state coordinator of Indian affairs;

(b) discuss and negotiate with individual Indian tribes in Montana the possibility of resolving other state taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, through state-tribal cooperative agreements; and

(c) report its findings on negotiations with tribal authorities on a comprehensive state-tribal taxation agreement or proposed legislation to the interim committee on Indian affairs prior to the 53rd legislative session.

(2) The legislature also directs the interim committee on Indian affairs to work with the Montana tribal chairman's association, the state coordinator of Indian affairs, and individual tribes to:

(a) monitor negotiations conducted pursuant to subsection (1)(a) for proposed cigarette tax collection;

(b) consider alternatives for cigarette tax collection, including

possible cooperative agreements to avoid dual taxation by state and tribal governments;

(c) after public hearings and consultation with tobacco wholesalers and retailers, propose legislation to the 53rd legislature to provide for collection of the cigarette sales tax from non-Indian purchasers for cigarettes sold on Indian reservations. The legislation must include a mechanism to prevent dual taxation by providing for revenue sharing between the state and a tribal government that has adopted an ordinance imposing a cigarette tax that is identical to that imposed by the state.

(d) identify other unresolved taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, between the state and Montana Indian tribes; and

(e) propose legislation to the 53rd legislature that would facilitate a cooperative government-to-government resolution of all Indian reservation taxation issues.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates July 1, 1993.

HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE COMMITTEE ON INDIAN AFFAIRS TO CONDUCT A STUDY ON DISPARITIES IN SENTENCING OF NATIVE AMERICANS.

WHEREAS, in 1987, approximately 17% of all prison inmates under state or federal jurisdiction in Montana were Native Americans; and

WHEREAS, Native Americans account for only 6% of the total population in Montana; and

WHEREAS, these statistics show that Native Americans are disproportionately represented in the Montana inmate population; and

WHEREAS, the disproportionate representation of Native Americans in the inmate population raises questions concerning the sentencing of Native Americans in this state; and

WHEREAS, national studies have documented racial disparities in sentencing and the time served by minorities who are sentenced to prison.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Indian Affairs conduct a study on disparities in sentencing of Native Americans.

BE IT FURTHER RESOLVED, that in conducting its study, the Committee on Indian Affairs:

- (1) collect and analyze data on sentencing of Native Americans in Montana;
- (2) examine the reasons for any disparities in sentencing of Native Americans; and
- (3) make recommendations for eliminating or reducing any disparities in sentencing of Native Americans in this state.

BE IT FURTHER RESOLVED, that the Committee report its findings and recommendations to the 53rd Legislature and, if appropriate, prepare

legislation to implement its recommendations.

BE IT FURTHER RESOLVED, that the Montana Bar Association, the University of Montana Law School, and the Department of Institutions assist and cooperate with the Committee on Indian Affairs in conducting the study called for by this resolution.

RECOMMENDATION

The Committee on Indian Affairs (IAC) respectfully recommends to the 53rd Legislature that legislation be adopted to clarify that the State-Tribal Cooperative Agreements Act applies to negotiations regarding the assessment and collection of a tax, license, or permit fee. (See Appendix A.)

CIGARETTE TAXATION

Background

An excise tax is a special sales tax targeted at specific items. The tax is generally imposed at the wholesale level and passed on to consumers in the retail sales price. Most excise taxes are levied at specific rates. The most common items subject to an excise tax are motor fuels, alcoholic beverages, and cigarette and tobacco products.

An excise tax is sometimes referred to as a sumptuary tax when it is applied to certain items, such as cigarettes or alcohol. The primary objectives of a sumptuary tax are to discourage the consumption of certain products and to charge the user for any social costs that might be borne by the public at large.¹

The first federal excise tax on cigarettes was imposed in 1864 at the rate of 8/10 of 1 cent for a pack of 20 cigarettes.² The first state to impose a cigarette tax was Iowa in 1921.³ Many states adopted a cigarette tax in response to the fiscal problems brought about by the Great Depression.⁴ Currently, all 50 states impose a tax on cigarette sales, with North Carolina being the last state to adopt a cigarette tax in 1969.⁵

Montana enacted a cigarette excise tax in 1947 (Chapter 289, Laws of 1947). The tax rate was 2 cents for a pack of 20 cigarettes, and the revenue was deposited into the general fund. As in most states, Montana steadily increased its cigarette tax over the years. The current tax rate is 18 cents a pack. The revenue goes to the long-range building program for debt service and capital projects, with any surplus accruing to the general fund.

Cigarette taxes have historically been a stable source of revenue for state governments. This stability was due to the inelasticity of demand and historic increases in consumption. This steadily increasing consumption,

coupled with periodic tax increases, contributed to a steady growth in cigarette tax revenue. However, in recent years, the revenue growth has been due solely to tax increases because of a decline in the consumption of tobacco products. With increasing recognition of the hazards associated with cigarette smoking, this trend toward decreased consumption is most likely to continue. Unless further tax increases are imposed, revenue will decline.

Montana's revenue from the cigarette tax steadily increased from the tax's inception in 1947 until the mid-1980s. However, beginning in fiscal year 1985, revenue began to decline.⁶ There was a slight increase (4%) in revenue from 1989 to 1990,⁷ but this increase coincided with a 12.5% tax rate increase from 16 cents to 18 cents a pack (Chapter 681, Laws of 1989).^{*} Revenue from the cigarette tax accounts for approximately 2% of Montana's total tax revenue.⁸

Cigarette tax evasion, or "bootlegging", has become a major regulatory problem for every state. The major source of cigarette tax evasion in Montana is the sale of nontaxed cigarettes to non-Native Americans on reservations. Only tribal members are entitled to purchase tax-free cigarettes on a reservation, but because the state has never asserted its authority to collect the tax on the reservation, non-Native American purchasers benefit from the reservation's tax-exempt status. Twenty-nine percent of Montana's cigarette sales in 1990 were made on reservations.⁹ The "smokeshops" on reservations openly advertise reservation discount prices.¹⁰ In testimony offered in opposition to legislation to collect the cigarette tax from non-Native Americans on a reservation, the manager of a smokeshop on a reservation stated that "over half of the cigarettes we sell are to out-of-state tourist traffic".¹¹

* The 2-cent increase in the cigarette tax was earmarked for a study to consider locations for the construction of a veterans' nursing home and for the construction and remodeling of the home.

Collection of the cigarette tax on reservations was not a major issue until the mid-1970s. In 1975, law enforcement officials arrested a tribal member on the Flathead Reservation for failure to possess a cigarette retailer's license and for selling nontax-stamped cigarettes. This action ultimately led to a United States Supreme Court decision that held that the state was barred from imposing the cigarette tax on on-reservation sales to tribal members and from requiring a vendor license fee from a tribal member operating a smokeshop on a reservation. However, the state could require a Native American smokeshop operator to add the state tax to the sales price when selling to non-Native Americans. Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation, 425 U.S. 463 (1976). In the 1975 Moe decision and in another decision in 1980, the Supreme Court held that the "state's requirement that the Indian tribal seller collect a tax validly imposed on non-Indians was a minimal burden . . .". Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980). While the Court stated that a state could extend its tax, collection, and recordkeeping requirements onto the reservation, the Court did not mandate that the state had to be the tax collector. In 1979, Montana passed legislation to permit the sale of cigarettes without a license by persons exempt from state cigarette taxation provisions (Chapter 382, Laws of 1979). In the same year, only 4% of cigarette sales in the state occurred on reservations.¹²

The Montana Legislature has attempted at least twice to pass legislation that would require non-Native American purchasers of cigarettes on a reservation to pay the state cigarette tax. Senate Bill No. 440, introduced in 1989, exempted from the tax all cigarettes sold by a Native American retailer to tribal members within the boundaries of the tribe's reservation. However, a wholesaler would have been required to precollect the tax on all cigarettes entering the reservation for retail sale. The wholesaler could then seek a refund or tax credit for the precollected taxes on cigarettes sold by a Native American retailer to tribal members on a reservation. Arguments in favor of Senate Bill No. 440 included: increased revenue, elimination of the unfair competitive advantage of tribal retailers, a uniformly levied tax, and

decreased smuggling. Opponents centered their arguments on the economic losses that would be suffered by wholesalers, truckers, and Native American retailers if the legislation passed. Tribes opposed the bill because it was drafted without any involvement by tribal governments. Senate Bill No. 440 died in the Senate Taxation Committee.

Another U.S. Supreme Court decision involving the collection of a state tax on cigarettes sold on a reservation was handed down in 1991 in Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe, 111 S. Ct. 905 (1991). In that decision, Chief Justice Rehnquist offered several options to states attempting to collect taxes, including entering into agreements with tribes to adopt a "mutually satisfactory regime" for collection of the tax. This would seem to intimate that either the state or the tribe could legally collect the tax.

In 1991, another attempt was made to resolve the issue of cigarette tax evasion on reservations. As introduced, House Bill No. 1012 (HB 1012) was very similar to Senate Bill No. 440 in its plan to collect the lawfully imposed taxes. However, the bill also required the Department of Revenue to negotiate with the individual tribes on methods of implementing the legislation and to discuss and negotiate with the individual tribes the possibility of resolving other taxation issues through state-tribal cooperative agreements. House Bill No. 1012 was eventually passed by the Legislature and signed by the Governor, becoming Chapter 697, Laws of 1991, but not before it was amended to remove the tax collection plan. It did, however, retain the language relating to state and tribal negotiations.

Committee Activities

House Bill No. 1012 directed the IAC to monitor negotiations between the Department of Revenue and the individual tribes regarding cigarette tax collection. At each IAC meeting during the 1991-92 interim, a

representative of the Department reported on the progress of the negotiations.

The first Native Americans to actively negotiate with the Department were the Fort Peck Tribes. The negotiations began in the fall of 1991 and addressed motor fuel, alcohol, and cigarette taxes. Initial discussions on the cigarette tax centered on a quota system whereby the tribal government would receive a certain amount of tax-free cigarettes to be sold by the smokeshops. The tax would have to be collected on any cigarettes sold above the quota. Negotiations with the Fort Peck Tribes continued throughout the interim. The Department also began discussions with the Blackfeet, Salish-Kootenai, Fort Belknap, and Northern Cheyenne Tribes. However, the negotiations with the Fort Peck Tribes were the only ones to come to fruition. In April 1992, the Department and the Fort Peck Tribes concluded three taxation agreements, including one for the cigarette tax. (See Appendix B.) The cigarette tax agreement calls for the establishment of a maximum annual quota of 60,000 cartons of cigarettes to be sold tax-free on the Fort Peck Reservation. The tribes will license those retailers entitled to receive quota cigarettes and will adopt and enforce an ordinance prohibiting the sale of untaxed cigarettes to persons on the reservation who are not entitled to purchase the cigarettes tax-free. Native American retailers are required to keep detailed records of all sales of quota cigarettes.

The IAC also examined other states with substantial Native American populations to determine how those states address the issue of cigarette taxation. In states that have addressed the issue of the collection of a state tax on cigarettes sold on a reservation, two general approaches are used: a quota system and a tax-sharing arrangement. Under a quota system, a certain number of untaxed cigarettes are made available to a tribe for sale on a reservation. The tax must be collected on all cigarettes sold over that number. The number of untaxed cigarettes is arrived at by a formula agreed to by both the state and the tribe. Under a tax-sharing agreement, the state refunds to a tribe an amount of money reasonably equivalent to the

precollected tax on sales of cigarettes to Native Americans on the tribe's reservation. Usually the refund is computed by multiplying the state per capita consumption of cigarettes times the number of enrolled tribal members times the state tax rate on each pack of cigarettes.

The IAC felt that either approach was acceptable. The quota system was chosen by the Department of Revenue and the Fort Peck Tribes for their agreement. Agreements with other tribes may or may not be based on a tax-sharing arrangement.

House Bill No. 1012 also directed the IAC to identify other unresolved state-tribal taxation issues and to propose legislation to facilitate a cooperative resolution to those issues. However, the 1991 Legislature confused this direction by adopting House Joint Resolution No. 53, which calls for a study by the Revenue Oversight Committee of all aspects of federal, state, local, and tribal taxation on reservations. Therefore, with the support of the Revenue Oversight Committee, the IAC decided to recommend legislation to the 53rd Legislature that would assist the Department of Revenue in its taxation negotiations with the tribes. (See Appendix A.)

The legislation being recommended by the IAC allows the appropriate state agencies to negotiate taxation agreements with tribal governments absent the need for legislative approval of each agreement. The legislation amends the State-Tribal Cooperative Agreements Act to clarify that the Act applies to taxation agreements and to specify the contents of a taxation agreement, including procedures for collecting the tax revenue. The legislation also revises the tax code to provide for the distribution of revenue collected through a state-tribal cooperative taxation agreement. Currently, if the state enters into a tax-sharing agreement with a tribe, there is no mechanism for sharing the collected taxes. An excellent example is the liquor tax agreement between the state and the Fort Peck Tribes. Although the agreement was accepted by both the state and the tribes in April 1992, it cannot be implemented until after the 1993 Legislature meets because of

the need to amend statutes to allow the state to share the tax revenue.

The bill also attempts to treat all governments equally by allowing the issue of who collects the tax to be negotiated. The bill does require the government collecting the tax to limit administrative costs to 5% or less, to maintain separate revenue accounts, and to submit to regular audits.

Summary

The passage of HB 1012 and the conclusion of a cigarette taxation agreement with the Fort Peck Tribes bodes well for the eventual resolution of the problems surrounding the collection of the state cigarette tax on reservations. This is not to say that future agreements will be easily negotiated; some tribal retailers derive significant revenue from the sale of tax-free cigarettes on a reservation. However, the work with the Fort Peck Tribes over this last year has proved the effectiveness of negotiation and its superiority over litigation and will pave the way for future agreements.

ENDNOTES

1. Thomas F. Pogue, "Excise Taxes," Steven D. Gold (ed.), Reforming State Tax Systems (Denver: National Conference of State Legislatures, 1986), p. 262.
2. Report Relative to Cigarette Bootlegging (Boston: Legislative Research Council, 1980), p. 8.
3. Ibid.
4. Katherine W. McElveen, "Texas Alcohol and Tobacco Taxes," Rethinking Texas Taxes (Austin, Texas: Select Committee on Tax Equity, 1989), Vol. 2, p. 407.
5. Report Relative to Cigarette Bootlegging, p. 8.
6. Montana Department of Revenue Biennial Report 1986-1988, Montana Department of Revenue, p. 40.
7. Montana Department of Revenue Biennial Report 1988-1990, Montana Department of Revenue, p. 48.
8. Ibid., p. 5.
9. Minutes of the House Taxation Committee, April 3, 1991, p. 3.
10. Advertisement in Escort Magazine, 1990-91, p. 13.
11. Testimony of Ken Krantz, Exhibit No. 8, Minutes of the Senate Taxation Committee, March 3, 1989.
12. Minutes of the House Taxation Committee, April 3, 1991, p. 3.

DISPARITIES IN THE CRIMINAL SENTENCING OF NATIVE AMERICANS

Background

Since the civil rights era of the 1960s, greater and greater attention has been given to the issue of racial bias in America's societal institutions. One area that has been the subject of numerous studies is the criminal justice system. At almost every stage of criminal processing, minorities are overrepresented.¹ While most of the attention has been focused on the Black American and the Hispanic, some studies have looked at the Native American's experience with criminal justice and have found some startling statistics.² Native Americans experience far higher arrest rates and conviction rates and receive longer sentences. However, they are involved much less often in violent or felony property offenses.³

In the early 1970s, Edwin L. Hall and Albert A. Simkus conducted a study on the types of sentences imposed on whites and Native Americans in Montana over a nearly 6-year time period. The study was triggered by the fact that in 1974, Native Americans composed 3% of the state's population yet represented 12% of the offenders on probationary sentences and from 22% to 25% of the inmate population in Montana State Prison.⁴ The data for the study was gathered from the official records of the Board of Pardons for all white offenders and all Native American offenders sentenced to probationary types of sentences for having committed felonies under state jurisdiction between July 1966 and March 1972. The probationary types of sentences were identified as:

- (1) deferred sentences;
- (2) entirely suspended sentences; and
- (3) partially suspended sentences that involve a short term of imprisonment followed by probation.

Hall and Simkus analyzed the data with respect to the percentage of offenders within each ethnic group receiving each type of sentence. Because of the possibility that the discrepancy in sentencing could be related to the different patterns of criminal behavior rather than to the existence of racial discrimination in sentencing, the researchers used 11 test factors to explore explanations of a relationship between ethnicity and the type of sentence received.

As a result of their research, Hall and Simkus found that there was a difference between the types of sentences imposed for whites and those imposed for Native Americans. Native Americans were less likely to receive sentences that allowed them the opportunity to escape stigmatization or incarceration. In other words, Native Americans were less likely to receive deferred sentences and more likely to receive sentences involving limited incarceration in the state prison.⁵

Hall and Simkus offered some possible explanations for the sentence inequalities they found, many of which were related to the negative stereotypes of Native Americans that existed in the 1970s and that, to a certain extent, still exist today. Other explanations included poverty, unfamiliarity with the criminal justice system, visibility in the white community, and perception of the reservation environment as nonconducive to successful probation.⁶

Since the Hall and Simkus study, there have been no other studies exclusively devoted to the issue of sentencing disparities among Native Americans. However, in 1988, the Criminal Justice and Corrections Advisory Council (CJCAC) conducted a study of sentencing practices in Montana. The primary purpose of the study was to describe sentencing practices around the state. The data was collected at the county level on felony cases filed during 1987 and on which final disposition had occurred at

the time of the data collection. Eight counties were chosen, representing various differences in terrain, economics, and population.*

The CJCAC study also collected data on race. The data collection showed that Native Americans were overrepresented in the study, accounting for 2% of the general population of the eight counties and 11% of the offenders in those counties.⁷ The study also found that in fiscal year 1987, 79.4% of prison admissions were white, while 12.8% were Native Americans.⁸ However, no attempt was made to interpret the racial data because that was outside the scope of the study.

In 1989, the Montana Board of Crime Control (MBCC) conducted a study on racial discrimination in the juvenile justice system. The MBCC found that the sentencing disparities in the juvenile justice system mirrored the sentencing disparities experienced by Native American adults.⁹

During the 1991 legislative session, Representative Angela Russell introduced House Joint Resolution No. 56 (HJR 56), calling for a study by the IAC on disparities in sentencing of Native Americans. Representative Russell was concerned about the disproportionate number of Native American people in the prison population and the possibility that the numbers would continue to grow. The resolution was passed by the Legislature, and the study was undertaken by the IAC.

Committee Activities

At its second meeting of the interim on September 27, 1991, the IAC devoted a major portion of the meeting agenda to the HJR 56 study. People with expertise in the criminal justice system and experience in dealing with Native Americans in that system were invited to offer comments and recommendations to the IAC on the direction of the study.

* The counties from which data was collected were Cascade, Dawson, Richland, Flathead, Gallatin, Lewis and Clark, Missoula, and Yellowstone.

The meeting participants generally applauded the IAC's efforts but also offered some cautions. Sentencing disparities most likely exist, but pinpointing the exact reasons may be very difficult. Sentencing is only one step in the criminal justice process; other steps include arrest, prosecution, incarceration, probation, parole, and release. Discrimination can exist at any one point in the process. Most racial data comes from self-identification and may result in underreporting. The IAC may need to develop a definition of "Native American" for use in collecting data. In order to ensure that the data is true, the IAC should not rely on surveys filled out by people in the counties; rather, IAC staff should go to the counties and collect the data. Another issue is Native American women in prison; they are more overrepresented in the Montana prison population than are Native American men.

After listening to the meeting participants, the IAC felt that this study could not be completed in a single interim and that a goal for this interim should be the design of a survey instrument. There was some concern expressed that the study would require additional funding and staff. The staff was asked to investigate whether other states had undertaken studies and how they were conducted.

In May 1992, the staff reported on two sentencing disparity studies conducted by the Province of Alberta and the State of Florida. In both instances, the studies were conducted by special commissions with hired staff. Each study involved extensive travel and numerous public hearings.

The IAC also heard a report from the MBCC entitled: Report on Data Analysis of Prison, Parole, and Probation Information. The data from the study came from the Department of Corrections and Human Services. The basic findings of the study offered inconclusive evidence of the existence of sentence disparities. The report did find that the percentage of Native Americans in each of the offender groups (prison, parole, and probation) was higher than it is in the general population.¹⁰ However, other findings were

mixed. For example, for some crimes, whites received longer sentences than did Native Americans.¹¹

After listening to the MBCC report and to representatives from the Department of Corrections and Human Services, the IAC began to question the need for conducting another study on sentencing. Members felt that it would be a waste of limited dollars to collect more statistics; money should now be spent on cultural training and awareness programs for criminal justice officials, especially prison guards. However, members could not agree on the existence of sentencing disparities based purely on race.¹² The IAC asked the staff to work on developing a resource list of people and programs that could offer cultural training on Native American issues. (See Appendix F.)

Summary

The sentencing disparity study followed a circuitous route this interim before reaching a final conclusion. From its beginning as a full interim study, it evolved into a proposal to look at a training program for criminal justice officials. There were a number of reasons for this evolution. After listening to experts in the criminal justice field and reviewing the work in other states, IAC members realized that existing IAC staff and funding were inadequate to conduct the type of study the members desired in a single interim. As the IAC further pondered the issue, especially after reviewing the data in the MBCC study, members began to question the efficacy of gathering more data. The IAC decided that the best course of action was to concentrate on ways of reducing or eliminating the disparities through education. Native American cultural training for prison guards will most likely be pursued by the IAC next interim.

ENDNOTES

1. Nella R. Lee, "Racial Discrimination in the Juvenile Justice System of Montana," Crime in Montana, 1990 Annual Report (Helena: Montana Board of Crime Control, 1990), p. 33.
2. Ibid., p. 34.
3. Ibid.
4. Edwin L. Hall and Albert A. Simkus, "Inequality in the Types of Sentences Received by Native Americans and Whites," Criminology 13, No. 2 (August 1975), p. 200.
5. Ibid., p. 215.
6. Ibid., pp. 215-218.
7. Susan Byorth, David Elenbaas, and Lois Menzies, Study of Montana Sentencing Practices (Helena: Criminal Justice and Corrections Advisory Council, 1990), p. 20.
8. Ibid.
9. "Racial Discrimination in the Juvenile Justice System," p. 34.
10. Gery Leonardson, Report on Data Analysis of Prison, Parole, and Probation Information (Helena: Montana Board of Crime Control, 1992), p. 6.
11. Ibid., p. 9.
12. Minutes of the May 11, 1992, meeting of the Committee on Indian Affairs (Helena: Montana Legislative Council), p. 16.

OTHER ISSUES

Introduction

There are certain issues in Native American affairs that are of ongoing interest to the IAC. Each interim, the IAC hears reports on these issues and offers guidance and assistance, if requested. These issues include gambling, Native American child welfare, water rights, and education.

Gambling

The passage of the federal Indian Gaming Regulatory Act (IGRA) in 1988 has thrust gambling to the forefront of state-tribal relations in almost every state with a significant Native American population. The purpose of the IGRA is to regulate gambling on reservations while promoting tribal economic development (25 U.S.C. 2702). However, before certain types of gambling are permitted on a reservation, a tribe must enter into a compact with the state in which the reservation is located. It is this portion of the law that has given the issue of Native American gambling its current prominence. Although Native American gambling was not an issue that the IAC was specifically requested to address, the IAC has had a keen interest in the topic since passage of the IGRA.

At its December 5, 1991, meeting, the IAC heard presentations on Native American gambling in Montana from the Department of Justice, which is charged with implementation of the IGRA in Montana, and from various tribal representatives. The Department reported that it had concluded a compact with the Fort Peck Tribes and was in negotiations with the other tribes.

Throughout the negotiations, the state has firmly maintained two positions. First, the expansion of gambling in the state may be authorized only by the Legislature. Therefore, only those types of gambling that are legal in

Montana may be authorized on a reservation. Other forms of gambling, such as slot machines and blackjack, cannot be allowed. The second position pertains to jurisdiction. The state maintains that it has jurisdiction over non-Native American gambling on reservations, while the tribes insist that they have jurisdiction over all gambling on reservations. These two issues, especially the issue of jurisdiction, have impeded the progress of the negotiations.

The IAC took no action on Native American gambling this interim. However, the IAC will continue to monitor the negotiations and to offer its assistance, if requested.

Native American Child Welfare

In 1987, the Montana Legislature created the position of Indian child welfare specialist in the Department of Family Services (Chapter 259, Laws of 1987). The legislation was introduced at the request of the IAC. It was the IAC's intention that the specialist serve as a technical expert in Native American child welfare matters and act as a liaison between tribal and state/local governmental agencies in implementing the federal Indian Child Welfare Act of 1978. Since passage of Chapter 259, the IAC has taken an active interest in the activities of the Indian child welfare specialist.

At its May 11, 1992, meeting, the IAC heard a proposal from the Department of Family Services to create an Indian Child Services Bureau within the Department to ensure that all the policy issues concerning Native American foster care are addressed and that the federal requirements for the protection of Native American children in foster care are met. Creation of the Bureau would necessitate the hiring of two additional staff persons. The IAC was asked by the Department to send a letter to Governor Stephens urging his support of this Bureau and its inclusion in the executive budget. (See Appendix G.)

The Department also asked the IAC to consider legislation for a Montana Indian Child Welfare Act that would parallel the federal legislation. The purpose of a state act would be to highlight the needs of Native American children in Montana. The IAC was cautioned, however, that a state act would be useless unless additional resources were available to meet those needs. The IAC decided to delay action on a Montana Indian Child Welfare Act until a response had been received from Governor Stephens regarding the inclusion of an Indian Child Services Bureau in the executive budget. If the response from the Governor was positive, the IAC would pursue legislation on a Montana Indian Child Welfare Act. The IAC received a reply from the Governor on June 9, stating that the request from the Department could not be honored at this time because of the state's continuing fiscal problems. (See Appendix H.)

Water Rights

The work of the Reserved Water Rights Compact Commission (RWRCC) has been of interest to the IAC because the IAC successfully introduced legislation in 1985 to extend the life of the RWRCC (Chapter 667, Laws of 1985). The purpose of the RWRCC is to negotiate with the tribes over their water rights and with the federal agencies that claim federal reserved water rights in the state. The first water compact was concluded with the Fort Peck Tribes in 1985.

At its September 27, 1991, meeting, the IAC heard a report on the settlement concluded with the Northern Cheyenne Tribe in 1991 and on the progress of negotiations with other tribes.

The Northern Cheyenne Compact is currently under consideration in the U.S. Congress. If Congress significantly amends the compact, the compact has to go back to the tribe and the Legislature for review. If Congress does not approve the compact, the RWRCC will have to renegotiate the compact.

Because the Legislature has established the Milk River Basin as a priority, the RWRCC is now concentrating its work with the Blackfeet, Rocky Boy, and Fort Belknap Tribes. The goal for the Fort Belknap Tribe is to have a compact ready for ratification by the 1993 Legislature.

Education

During the past two interims, the IAC has become actively involved in the issue of Native American education. In 1988, the IAC supported the Commissioner of Higher Education's grant proposal to study the problems of underrepresentation and underachievement of Native Americans in higher education. In 1991, the IAC was successful in securing legislative funding for the Office of American Indian/Minority Achievement (Office) for the Montana University System (Chapter 747, Laws of 1991). During the 1991-92 interim, the IAC continued its interest in Native American education by closely following the work of this Office.

This past year, the Office has been involved in a number of projects in Native American education from kindergarten through college. The director of the Office serves as coordinator of the Tracks Project, which is working to provide more accurate information on Native Americans in the Montana education system. The project has succeeded in obtaining enrollment data by race and grade level from the Office of Public Instruction (OPI). The project is currently working to develop agreements between OPI and the tribes to share that information.

The Office is working to implement the recommendations made in "A Plan for American Indian Education in Montana", which was adopted by the Governor, the Superintendent of Public Instruction, the Board of Regents, and the Board of Public Education in 1991. This plan also evolved from the Tracks Project and serves as a blueprint for Native American education in Montana.

In addition to its involvement in the Tracks Project, the Office is actively involved in assisting the university units, the vocational-technical centers, and the community colleges to develop minority action plans for their campuses. These plans are to assist these institutions in recruiting and retaining Native American students.

Other activities in which the Office has been involved include: organizing Montana's participation in the White House Conference on Indian Education; developing a directory of American Indians in Education; working with Native American student organizations on how to become involved in legislative activities; collecting data on the number of Native Americans enrolled in the University System; working to develop closer ties between the public school districts and the tribal education departments; pursuing funding for programs to encourage Native American students to pursue business degrees; reviewing K-12 and higher education curricula for the inclusion of Native American studies; and helping organize an annual meeting of University System presidents, community college presidents, vocational-technical center directors, and tribal college presidents.

SUMMARY

The IAC finished this interim with an acknowledgment of work to be continued. The IAC looked at the issues of taxation and sentencing disparity. In the area of taxation, the IAC's work coincided with work by the Revenue Oversight Committee and the Department of Revenue. The legislation proposed by the IAC, if passed by the Legislature, should facilitate the negotiations between the Department and the tribes. The IAC will continue to follow the negotiations between the Department and the tribes.

The sentencing disparity issue will continue to interest the IAC. Native American education and cultural training for criminal justice personnel will most likely be pursued by the IAC next interim. Also, the IAC will continue to monitor efforts by the Native American community to secure a Native American religious counselor for the prison.

One of the duties of the IAC is to educate both Native Americans and non-Native Americans about each group's governmental structures and institutions. In order to fulfill this duty, it will be important next interim for the IAC to hold at least one meeting on a reservation.

As the state becomes more involved with the tribes through gambling and taxation negotiations, the IAC's role as a liaison between the two entities may become even more important. The IAC must continue to emphasize its role as a forum for the promotion of amicable Native American/non-Native American relations.

ppe 2311cexa.

APPENDICES

APPENDIX A

**** Bill No. ***

Introduced By *****

By Request of The Committee on Indian Affairs, And
The Revenue Oversight Committee

A Bill for an Act entitled: "An act clarifying that the State-Tribal Cooperative Agreements Act includes assessment and collection of a tax or license or permit fee; establishing requirements for tax collection under a state-tribal tax agreement; amending sections 15-70-234, 18-11-103, and 18-11-104, MCA; and providing an effective date and an applicability date."

WHEREAS, the Legislature finds it necessary to clarify the State-Tribal Cooperative Agreements Act to reduce the delays in implementing taxation agreements entered into between the State of Montana and Montana Indian Tribes; and

WHEREAS, clarifying the State-Tribal Cooperative Agreements Act will also reduce the need for duplicative language resulting in increased costs associated with publication of the Montana Code Annotated; and

WHEREAS, the Court in the Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905 (1991), stated, among alternatives, that the state and a tribe may adopt a "mutually satisfactory regime" for collection of a tax, but did not mandate that a state collect the tax; and

WHEREAS, in an effort to promote a government-to-government

Draft Copy

Printed 9:22 am on November 13, 1992

relationship between the State of Montana and Montana Indian Tribes, and in recognition that both the State and tribal governments must be trusted to act responsibly, it is appropriate that the party designated to collect taxes on an Indian reservation pursuant to any agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the State-Tribal Cooperative Agreements Act to specifically include tax collection and to establish specific requirements for tax collection by either the State, public agency, or a Montana Indian Tribe.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Purpose. (1) It is the intent of the legislature that this part be used to promote cooperation between state agencies and sovereign tribal governments in mutually beneficial activities and services.

(2) It is also the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform; and

Draft Copy

Printed 9:22 am on November 13, 1992

(b) assess and collect any tax or license or permit fee lawfully imposed by the tribal government and public agencies and to share the revenues from the assessment and collection.

(2) The agreement shall ~~shall~~ must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the director of the agency is the governing body.

~~(2)~~ (3) The agreement ~~shall~~ must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement."

{Internal References to 18-11-103:
18-11-104}

Section 3. Section 18-11-104, MCA, is amended to read:

"**18-11-104. Detailed contents of agreement.** The agreement authorized by 18-11-103 ~~shall~~ must specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created thereby;
- (3) the purpose of the agreement;
- (4) the manner of financing the agreement and establishing and maintaining a budget therefor;
- (5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

Draft Copy

Printed 9:22 am on November 13, 1992

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(8) ~~when~~ if an agreement involves law enforcement:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement; and or

(9) if an agreement involves the assessment and collection of a similar tax or license or permit fee by the state or public agency and a tribal government:

(a) the procedure for determining the amount of revenue to be shared by the state or public agency and tribal government;

(b) the procedures for collection of the shared revenue;

(c) a statement specifying the administrative expenses to be deducted pursuant to [section 4] by the collector of the tax, license or permit fee;

(d) a statement that the government or agency collecting the tax or license or permit fee will be subject to an audit report of revenue collected and administrative expenditures;

(e) a statement that the state or public agency and the tribe will cooperate to collect only one tax and will share the

Draft Copy

Printed 9:22 am on November 13, 1992

revenue as specified in the agreement:

(f) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement;

(g) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement; and

(9) (10) any other necessary and proper matters, including a statement outlining the agreed-upon use of the revenue by the parties to the agreement."

{Internal References to 18-11-104: None.}

NEW SECTION. Section 4. Revenue Account -- administrative account -- distribution of revenue. (1) The revenue collected by the state, public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) The administrative expenses deducted by the state, public agency or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation, or 5%, whichever is less. Money from the administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement.

(3) Except for the administrative amount deducted under subsection (2), the revenue collected a state-tribal agreement

Draft Copy

Printed 9:22 am on November 13, 1992

must be deposited in a state special revenue account or a separate tribal account, and must be disbursed, as provided for in the agreement, on a quarterly basis.

(4) If a tax or license or permit fee is collected pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory or tribal ordinance distribution formula. For distribution of the remainder, the statutory or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

Section 5. Section 15-70-234, MCA, is amended to read:

"15-70-234. Cooperative agreement -- allocation of motor fuels taxes to tribal governments. (1) In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department of transportation and an Indian tribe may enter into a cooperative agreement. The department of transportation may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negotiations to each meeting of the revenue oversight committee. After negotiations are complete, ~~the agreement must be presented to the revenue oversight committee for review and comment before~~ the final agreement ~~is~~ must be submitted to the attorney general for approval pursuant to 18-11-105. ~~The agreement must provide~~

Draft Copy

Printed 9:22 am on November 13, 1992

~~that under conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax outside the boundaries of the reservation and will share the revenue as provided in this section. The agreement must provide that the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.~~

~~(2) The agreement may provide that the distributor may not be required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on gasoline that is not subject to a tribal tax.~~

~~(3) The agreement may provide that after deducting administrative expenses equal to 5% of the amount determined under subsection (2) and the amounts necessary for refunds, the department of transportation shall, on a quarterly basis, distribute the remaining amount to the tribal government.~~

~~(4) The agreement may provide for the collection, use, and distribution of the tax."~~

{Internal References to 15-70-234:
15-70-235 (2) 15-70-236 (3)}

NEW SECTION. Section 6. {standard} Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [sections 1 and 4].

NEW SECTION. Section 7. Effective date -

Draft Copy

Printed 9:22 am on November 13, 1992

{Standard} Applicability date. [This act] is effective July 1, 1993, and applies to tax agreements entered into on or after the [effective date of this act].

- END -

{ Eddy McClure
Staff Attorney
Montana Legislative Council
(406) 444-3064 }

APPENDIX B

FORT PECK - MONTANA AGREEMENT
ON DISTRIBUTION OF UNTAXED CIGARETTES
ON THE FORT PECK RESERVATION

THIS AGREEMENT is entered into this _____ day of _____, 199___, by and between the State of Montana, Department of Revenue, hereinafter referred to as "State" and Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, hereinafter referred to as "Tribes."

The Tribal Executive Board is the governing body of the Tribes and is authorized to enter into this Agreement by Article VII, Section 1, of the Tribes' Constitution.

The State is authorized to enter into this Agreement pursuant to ch. 697, Laws of 1991 and the State-Tribal Cooperative Agreements Act, § 18-11-101, MCA et seq.

The State and the Tribes agree as follows:

1. General purposes of agreement. The purposes of this agreement are to:

(a) ensure that persons on the Fort Peck Reservation who are not legally obligated to pay the state cigarette sales tax continue to be able to purchase cigarettes on the Reservation without paying the state tax; and

(b) ensure that the state cigarette sales tax is collected on cigarettes sold on the Fort Peck Reservation to persons who are legally obligated to pay the state tax.

2. Reservation Quota. The parties agree to establish a maximum annual quota of cigarettes to be sold tax free ("quota cigarettes") on the Fort Peck Reservation as follows. The annual quota shall initially be 60,000 cartons of cigarettes per calendar year. For 1992, the quota shall be prorated by the number of days from the effective date of this agreement to the end of the calendar year. The parties agree that the amount of the quota may be renegotiated at any time if either party gives notice to the other that it does not believe the quota accurately reflects the actual consumption of cigarettes by persons entitled to purchase cigarettes without paying state taxes. The parties shall have access to each other's records and the records of the retailers when renegotiating the amount of the quota. In order to be

effective for the next calendar year, a new quota must be renegotiated prior to November 30.

3. Shipment of cigarettes.

(a) The Tribes shall license each retailer on the reservation who it determines is entitled to receive quota cigarettes. It shall provide the State with the names of each retailer and the amount of quota cigarettes each retailer is authorized to receive for each calendar year. The information shall be provided at least 10 days before a new calendar year begins. The allocation for each retailer shall be the same as the previous calendar year unless changed by the Tribes. The State shall allow quota cigarettes to be shipped to each licensed cigarette retailer on the Fort Peck Reservation, in the amount designated by the Tribes for that retailer, from the distributor or distributors selected by each retailer. The distributors shall not collect the state tax on these quota cigarettes from the Tribally licensed retailer, but shall stamp the quota cigarettes and receive a refund of all prepaid taxes from the State. The quota cigarettes may be shipped at anytime during the year as designated by the retailers.

(b) The Tribes agree that by making available the agreed upon amount of quota cigarettes for sale on the Fort Peck Reservation, the State of Montana has fulfilled its legal obligation to make untaxed cigarettes available for purchase and consumption by persons on the Reservation entitled to purchase tax free cigarettes. It is agreed that no additional untaxed cigarettes need to be provided to the Reservation once the total quota amount has been shipped to the designated retailers on the Reservation for any calendar year.

4. Tribal law. The Tribes shall adopt and keep in force an ordinance enforcing the Reservation quota by prohibiting the sale of unstamped cigarettes and by prohibiting the sale of untaxed cigarettes to persons on the Reservation who are not entitled to purchase cigarettes without paying the state tax. In addition, the Tribes shall require licensed retailers to sell at or above the minimum prices that are set in state law, and require the Indian retailers to keep records of all sales of quota cigarettes. The

records shall include the names of all the persons who purchase tax exempt cigarettes, and the date and the amounts of all such purchases.

5. Effective date and term.

(a) This Agreement shall be effective the first day of the month following receipt by the parties of written notification that the State has adopted administrative rules and the Tribes have adopted an ordinance which specifically implements this Agreement.

(b) This Agreement shall remain in effect until January 1, 2002, and shall be automatically renewed for additional successive ten year terms if no action is taken by either party. However, this Agreement may be terminated at the end of any calendar year by either party by delivering written notice of termination to the other party on or before November 30. If the State or Tribes terminate any other agreement on taxes, either party may cancel this Agreement at any time after 30 days' written notice.

6. Amendments, renegotiation and renewal. This Agreement may be amended only by written instrument signed by both parties.

7. Reservation of rights and negative declaration. The State and Tribes have entered into this Agreement in part to resolve a legal dispute and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribes shall deem to have waived any rights, arguments or defenses available in litigation on any subject. This Agreement is specifically not intended to reflect or be viewed as reflecting in this or any context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party except to the extent necessary to implement and effectuate the Agreement's terms. This Agreement, conduct pursuant thereto or conduct in the negotiations or renegotiations of this Agreement shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation. By entering into this Agreement, neither the State nor the Tribes are

forfeiting any legal rights to apply their respective taxes otherwise except as specifically set forth in this Agreement. This Agreement does not apply to any state tax collected other than the tax on cigarettes as provided in MCA, 1991. It does not apply to any other taxes or fees of any nature collected by the State. This Agreement does not apply to any other tax collected by any other agency or subdivision of the State of Montana.

8. Notices. All notices and other communications required to be given under this Agreement by the Tribes and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

(a) If to the Tribes:

Chairman
Fort Peck Tribal Executive Board
Post Office Box 1027
Poplar, Montana 59255

(b) If to the State:

Director of Revenue
Montana Department of Revenue
Room 455, Mitchell Building
Helena, Montana 59620

Notice shall be considered given on the date of mailing.

DATED this _____ day of _____, 199__.

MONTANA DEPARTMENT OF REVENUE

DENIS ADAMS, Director

DATED this _____ day of _____, 199__.

ASSINIBOINE AND SIOUX TRIBES

CALEB SHIELDS
Chairman, Tribal Council
Reservation

APPENDIX C

NUMBER OF ADULTS ARRESTED IN MONTANA BY RACE (1984 - 1990)

	1984	1985	1986	1987	1988	1989	1990
WHITE	18,359	15,433	13,240	12,831	11,824	12,296	10,432
INDIAN	3,894	4,363	3,776	2,705	2,266	2,621	2,742
HISPANIC	223	144	97	109	107	118	111
BLACK	90	105	64	60	81	76	128
ASIAN	20	17	18	15	19	14	19
OTHER/UNKNOWN	752	11	64	14	4	9	17
TOTAL	23,338	20,073	17,259	15,734	14,301	15,134	13,449

	1984	1985	1986	1987	1988	1989	1990
WHITE	78.7%	76.9%	76.7%	81.5%	82.7%	81.2%	77.6%
INDIAN	16.7%	21.7%	21.9%	17.2%	15.8%	17.3%	20.4%
HISPANIC	1.0%	0.7%	0.6%	0.7%	0.7%	0.8%	0.8%
BLACK	0.4%	0.5%	0.4%	0.4%	0.6%	0.5%	1.0%
ASIAN	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
OTHER/UNKNOWN	3.2%	0.1%	0.4%	0.1%	0.0%	0.1%	0.1%
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

SOURCE: MONTANA UCR ARREST FILES

APPENDIX D

Table 35: Race/Ethnicity of Montana Correctional Populations.
 Percent of Total Prison, Parole & Probation Populations,
 By Sex. Fiscal Years 1986-1991.

FISCAL YEAR

PRISON POPULATIONS 1991 1990 1989 1988 1987 1986

Race/Ethnicity

MALE

White	78.4	78.0	77.0	76.1	76.5	75.8
Native Am.	15.2	14.9	14.9	15.6	14.7	15.8
Native Am./Other	2.7	2.9	3.0	3.3	3.7	3.1
Hispanic	2.1	2.5	3.0	3.2	3.1	3.1
Black	1.4	1.5	1.9	1.4	1.6	1.7
Other	0.2	0.2	0.1	0.2	0.3	0.4

FEMALE

White	75.0	70.8	70.1	75.0	86.0	77.5
Native Am.	21.1	25.0	19.4	17.3	11.6	17.5
Native Am./Other	2.6	2.8	1.5	0.0	0.0	2.5
Hispanic	1.3	1.4	9.0	7.7	2.3	2.5
Black	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0

PAROLE POPULATIONS

MALE

White	80.1	80.9	83.2	81.2	78.7	79.3
Native Am.	11.8	10.9	9.8	11.2	13.5	12.8
Native Am./Other	1.4	1.1	1.3	1.5	1.6	1.3
Hispanic	4.0	4.1	3.4	3.5	3.7	3.2
Black	1.7	2.0	1.4	2.1	1.9	2.7
Other	1.0	1.0	0.8	0.5	0.7	0.7

FEMALE

White	77.3	77.3	83.3	85.7	85.5	77.6
Native Am.	17.3	15.2	13.3	11.1	9.1	18.4
Native Am./Other	0.0	1.5	1.7	1.6	1.8	2.0
Hispanic	4.0	6.1	1.7	1.6	3.6	2.0
Black	0.0	0.0	0.0	0.0	0.0	0.0
Other	1.3	0.0	0.0	0.0	0.0	0.0

PROBATION POPULATIONS

MALE

White	84.6	84.8	84.3	84.6	83.9	85.1
Native Am.	11.1	11.0	11.8	11.2	11.9	10.9
Native Am./Other	0.8	1.0	0.8	0.8	0.6	0.5
Hispanic	2.0	1.9	1.6	1.6	1.9	2.1
Black	1.0	1.1	1.1	1.2	1.4	1.2
Other	1.5	0.3	0.4	0.5	0.3	0.2

FEMALE

White	84.1	85.2	82.6	81.2	82.0	82.4
Native Am.	12.2	11.5	13.1	14.0	14.3	13.9
Native Am./Other	0.9	0.4	0.6	0.7	0.8	0.5
Hispanic	1.9	1.8	2.4	2.6	1.8	2.3
Black	0.6	0.8	0.9	1.1	0.8	0.9
Other	0.4	0.2	0.3	0.4	0.2	0.0

APPENDIX E

Table 36: Race/Ethnicity of Montana Correctional Admissions.
 Percent of Total Prison, Parole & Probation Admissions,
 By Sex. Fiscal Years 1986-1991.

FISCAL YEAR

PRISON ADMISSIONS	<u>1991</u>	<u>1990</u>	<u>1989</u>	<u>1988</u>	<u>1987</u>	<u>1986</u>
<u>Race/Ethnicity</u>						
MALE						
White	78.2	80.7	77.8	74.3	79.1	79.1
Native Am.	15.6	13.7	14.2	16.4	12.9	12.4
Native Am./Other	1.8	1.1	2.7	2.8	4.3	2.5
Hispanic	2.5	2.5	2.3	4.6	2.7	3.8
Black	1.5	1.4	2.8	1.6	0.8	1.9
Other	0.3	0.5	0.2	0.4	0.2	0.2
FEMALE						
White	79.5	78.4	76.6	75.7	81.8	78.1
Native Am.	20.5	17.6	19.1	16.2	12.1	12.1
Native Am./Other	0.0	2.0	0.0	0.0	3.0	3.1
Hispanic	0.0	0.0	4.3	8.1	3.0	3.1
Black	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	2.0	0.0	0.0	0.0	0.0
PAROLE POPULATIONS						
MALE						
White	77.3	80.4	80.0	78.8	76.1	78.1
Native Am.	14.4	11.7	11.7	12.5	15.8	12.8
Native Am./Other	2.5	0.9	2.9	3.1	2.5	2.6
Hispanic	4.1	3.6	2.2	3.1	4.9	3.1
Black	1.1	2.7	1.9	2.1	0.7	2.6
Other	0.6	0.7	1.2	0.3	0.0	0.9
FEMALE						
White	78.4	71.4	88.0	88.5	80.0	77.3
Native Am.	18.9	20.4	8.0	11.5	12.0	18.2
Native Am./Other	0.0	0.0	4.0	0.0	0.0	0.0
Hispanic	0.0	8.2	0.0	0.0	8.0	0.0
Black	0.0	0.0	0.0	0.0	0.0	0.0
Other	2.7	0.0	0.0	0.0	0.0	4.5
PROBATION POPULATIONS						
MALE						
White	82.9	82.7	80.9	84.0	81.6	84.4
Native Am.	12.4	12.9	14.1	11.7	14.1	11.6
Native Am./Other	0.9	1.1	1.2	1.1	1.2	0.5
Hispanic	1.9	1.8	2.2	1.5	1.7	2.1
Black	1.1	1.3	1.2	0.9	1.0	1.1
Other	0.7	0.2	0.4	0.8	0.4	0.4
FEMALE						
White	80.1	85.6	83.6	84.0	78.6	80.7
Native Am.	14.7	12.0	13.4	12.1	16.7	15.9
Native Am./Other	2.0	0.0	0.4	0.5	1.4	1.1
Hispanic	2.0	1.2	1.5	1.9	1.9	1.7
Black	0.7	0.3	0.7	1.0	0.9	0.6
Other	0.7	0.3	0.4	0.5	0.5	0.0

APPENDIX F.

RESOURCE LIST FOR NATIVE AMERICAN CULTURAL TRAINING
(Partial List)

Tribal Colleges

Blackfeet Community College
Dull Knife Memorial College
Fort Belknap College
Fort Peck Community College
Little Big Horn College
Salish-Kootenai Community College
Stone Child College
NAES College

Montana University System

Native American Studies Center
Montana State University

Native American Studies
University of Montana

Individuals

Donald Wetzel, Sr., Superintendent
Harlem Public Schools

Ted Means
Minnesota Dept. of Corrections

Len Foster
Navajo Nations Corrections Project

Deborah Wetsit, Ph.D.
University of Montana

APPENDIX G



Committee on Indian Affairs

Room 138 State Capitol
Helena, MT 59620-1706
(406) 444-3064

52nd Montana Legislature

SENATE MEMBERS
DELWYN GAGE
MIGNON WATERMAN

HOUSE MEMBERS
ANGELA RUSSELL
ROLPH TUNBY

COMMITTEE STAFF
CONNIE F. ERICKSON
RESEARCHER
EDDYE MCCLURE
ATTORNEY

May 21, 1992

Governor Stan Stephens
State Capitol Room 204
Helena, MT 59620

Dear Governor Stephens,

The Committee on Indian Affairs urges your approval of the budget modification submitted by the Department of Family Services for the creation of an Indian Children Services Bureau. The modification has a priority number of 10, but the Committee strongly believes that this proposal should be included in the final executive budget.

The Indian Child Welfare Act mandates the placement of Indian children in foster or adoptive homes that reflect the unique values of Indian culture. In order to fulfill this mandate, the Department needs to develop Indian foster care and adoptive homes. The Indian Child Welfare Act was passed to stop the wholesale removal of Indian children from their families and the placement of them in non-Indian homes and institutions. This cannot be accomplished if the Indian homes are not available to receive and care for these children.

The Act also authorizes agreements between tribes and states for the custody and care of Indian children. The Department of Family Services has worked diligently over the past few years to try and fulfill its obligations. By July 1, 1992, contracts for the provision of child protection services will be concluded with four reservations; however, three reservations remain without contracts.

Approximately 25 percent of the children in foster care in Montana are Indian. Montana is obligated to serve the needs of these children and their families. Additional personnel are needed to negotiate the remaining contracts, monitor the existing ones, and develop suitable foster care and adoptive homes.

Governor Stephens
May 21, 1992
page 2

For these reasons, the Committee urges your support for this budget modification. Money invested in the care of children is money invested in Montana's future.

Sincerely,

Senator Del Gage, Chairman
Committee on Indian Affairs

ppe 2142cexa.

APPENDIX H



STAN STEPHENS
GOVERNOR

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

RECEIVED
JUN 19 1992
MONTANA LEGISLATIVE
COUNCIL

June 9, 1992

The Honorable Del Gage
Chairman, Committee on Indian Affairs
P. O. Box 787
Cut Bank, Montana 59427

Dear Del:

Thank you for your May 21 letter regarding the provision of services by the Department of Family Services to Montana's Native American children. We share wholeheartedly your commitment to preserving the unique values of Indian culture in our foster care and adoptive services programs, and are doing all that we can within available resources to carry out that commitment.

Because of our recognition of the legal requirements of the Indian Child Welfare Act and the foster care needs of Montana's Native American children, the Executive Budget recommendation presented to the 1991 regular session of the legislature included a request for approximately \$1.0 million for each fiscal year of the current biennium for the Department of Family Services to provide foster care services to Indian children. The recommendation in the Executive Budget was adopted by the legislature.

This FY 92-93 biennium service expansion budget request was funded at a time when many other high priority requests for funds both in DFS and in other agencies had to be either turned down completely or significantly reduced due to the general fund problems foreseen in 1990.

The budget modification which you address in your letter is a request for 3.00 new FTE which would require about \$161,000 in new general fund through the FY 94-95 biennium. During meetings with DES to review the request our OBPP analyst was told that the current contract monitoring, negotiating and other program functions required are presently being completed by the DFS Indian Child Welfare Specialist with help from the DFS regional offices.

I know you are aware that this new modification request comes at a time when the general fund expenditure/revenue picture is extraordinarily bad. Not only are some high priority requests for new FTE and service expansion modifications required to be turned down, but serious reductions in current level services and revenue

Honorable Del Gage
June 9, 1992
Page 2

increases will also be required to get the state back on a manageable track. DFS requested modifications for the FY 94-95 biennium of over \$13.0 million. They are only one of dozens of agencies, and not the largest agency, by far. This gives you some idea of the massive push to increase state expenditures which we face during the planning for the next Executive Budget. We do not currently expect the Executive Budget recommendation to the 1993 legislature to include anything near the requested amounts.

I hope that you will appreciate our position in this matter. We want to provide the best possible programs, in this and every other area of state government, but must recognize fiscal realities in doing so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stan Stephens".

STAN STEPHENS
Governor

80 copies of this public document were published at an estimated cost of \$2.85 per copy, for a total cost of \$228.00, which includes \$228.00 for printing and \$0.00 for distribution.